

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  MCI WORLDCOM, INC.,  Respondent.	DOCKET NO. FCU-03-21
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**ORDER REGARDING MOTION TO COMPEL**

(Issued June 4, 2004)

On May 26, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion to compel discovery, request for expedited consideration, request for hearing, and a memorandum in support of the motion. The Consumer Advocate moved for an order compelling "full and responsive answers" to data request numbers 3, 6, 8, 9, 13, and 14. It attached responses to data requests numbers 1 through 17 (excluding 10) for informational purposes. The Consumer Advocate stated it had made a good faith but unsuccessful attempt to resolve the issues raised by the motion with opposing counsel without the intervention of the Utilities Board (Board), and attached what it stated were copies of relevant communications. The Consumer Advocate requested expedited consideration and a hearing on the motion. Included with the attachments were

copies of three versions of a protective agreement. The third version of the protective agreement is attached to an email dated May 18, 2004, from Mr. Graziano, attorney for the Consumer Advocate, to Mr. Dublinske and Ms. Tanner, attorneys for MCI. In its memorandum, the Consumer Advocate discussed the discovery dispute between the parties, and requested a hearing and a ruling regarding confidentiality of certain materials that are the subject of the parties' discovery dispute and a current adjudication that Reese Brothers is an agent of MCI.

On May 28, 2004, MCI WorldCom, Inc. (MCI) filed a resistance to the motion to compel discovery. MCI stated it had fully responded to data requests 13 and 14 and that it would voluntarily provide additional information to the Consumer Advocate once a protective agreement was signed. MCI objected to the protective agreement drafted by the Consumer Advocate. In particular, MCI stated if the Consumer Advocate wants to file information claimed confidential by MCI with the Board, the Consumer Advocate should have the burden to make the requisite protective filing. MCI argued 199 IAC 1.9(6) requires the person submitting information to make the request for confidential treatment and that the request must be attached to the allegedly confidential materials. MCI argued that only the Consumer Advocate is in a position to comply with the rule, and stated it would provide the information subject to a satisfactory protective agreement. MCI argued data request 8 is another iteration of the dispute over the protective agreement. MCI further argued that data requests 3, 6 and 9 seek information not within MCI's control, that it nonetheless is seeking to obtain the information, that it is moving with all due speed to seek the information

from Reese Brothers, and that there is no way to obtain the information sooner than when Reese Brothers provides it to MCI.

**Protective Agreement, Confidential Information, and Data Requests 8, 9, 13, and 14**

If MCI claims that any information filed with the Board is confidential, whether filed by the Consumer Advocate pursuant to a protective agreement or filed by MCI itself, it is MCI that must comply with the requirements of 199 IAC 1.9(6). MCI is the entity claiming the material is entitled to confidential treatment and it is the entity that must provide the legal basis for the claim, the facts in support, and an affidavit by a corporate officer. The procedure set forth in the protective agreement drafted by the Consumer Advocate attached to the May 18, 2004, email from Mr. Graziano to Mr. Dublinske and Ms. Tanner is reasonable. The parties are directed to execute this version of the protective agreement without delay.

The undersigned will not rule on whether the materials referred to are entitled to confidential treatment as requested by the Consumer Advocate. Iowa Code Chapter 22 (2003) and 199 IAC 1.9 do not apply to materials that are the subject of discovery disputes. They only apply to materials in the possession of the Board. If material claimed to be confidential is filed with the Board and MCI files a request that the information be kept confidential in accordance with rule 1.9, the Board will rule on the request for confidential treatment at that time.

MCI has responded to data requests 8, 13, and 14 and has stated it would provide the additional information requested once a protective agreement is signed. Although MCI stated information requested in data request number 9 is not within

MCI's control, this is incorrect. The basis for MCI's compensation of Reese Brothers is in MCI's control. Although it stated part of the request is vague, MCI has stated it would provide the information once a protective agreement is signed.

No further order regarding data requests 8, 9, 13, and 14 is required at this time. The basis of this ruling is that MCI and the Consumer Advocate will execute the protective agreement and MCI will provide the information it promised to the Consumer Advocate.

#### **Data Requests 3 and 6**

MCI argued the information requested in data requests 3 and 6 is not within MCI's control, but rather, is in the possession of Reese Brothers. However, MCI stated it has requested the information from Reese Brothers and would provide the information to the Consumer Advocate as soon as it is received from Reese Brothers.

The undersigned declines to rule on the Consumer Advocate's request for a current adjudication that Reese Brothers is an agent of MCI. Adjudication of issues in the case will be made after hearing on the merits, not during a discovery dispute, unless absolutely required for resolution of a discovery dispute. So long as MCI will voluntarily provide the information requested that relates to this issue, there is no need for a ruling at this time.

No further order regarding data requests 3 and 6 is required at this time. The basis of this ruling is MCI's statement that it is working with Reese Brothers to obtain the required information and will provide it to the Consumer Advocate as soon as Reese Brothers provides it to MCI.

The Consumer Advocate requested a hearing on its motion. Since the parties fully argued their respective positions in the motion, memorandum, and resistance, a hearing on the motion is not necessary.

**IT IS THEREFORE ORDERED:**

1. The parties are directed to execute a protective agreement as stated in the body of this order.
2. As discussed in the body of this order, there is no need for further ruling or a hearing on the motion to compel at this time.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 4<sup>th</sup> day of June, 2004.